

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on March 8, 2001  
at 9:00 A.M., in Room 303 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Duane Grimes, Vice Chairman (R)  
Sen. Al Bishop (R)  
Sen. Steve Doherty (D)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Walter McNutt (R)  
Sen. Jerry O'Neil (R)  
Sen. Gerald Pease (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Valencia Lane, Legislative Branch  
Cecile Tropila, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 405, HB 393, HB 402,  
HB 390, 3/5/2001  
Executive Action: HB 405, HB 402, HB 390,  
HB 393, HB 224

#### **HEARING ON HB 405**

**Sponsor:** REP. YOUNKIN, HD 28, BOZEMAN

**Proponents:** Marty Lambert, Attorney, Gallatin County  
Gloria Edwards, Coordinator, Victim/Witness  
Program  
Dennis Paxinos, Attorney, Yellowstone County  
Cecelia Kimble, Representing Self

**Colleen Murphy, Executive Director of Social  
Workers  
Jane Jelinski, MT. Assoc. of Counties  
Mona Jamison, Lobbyist, Gallatin County  
Pam Bucy, Assistant Attorney General  
Ed Krasinski, Victim Witness Advocate, Jefferson  
County**

**Opponents:           None**

**Opening Statement by Sponsor:**

**REP. YOUNKIN, HD 28, BOZEMAN**, stated this bill modifies protections of release from bail, requiring a person to not be released on bail without first appearing before a judge. She expressed the need for this bill allowing victims to have a safe haven, helping to increase safety for victims of domestic violence. A requirement is added within Section 2 including victims of crime of partner or family assault and violation of protection. She said this bill clarifies the surcharge and the distribution. She pointed out the surcharge increases from \$10 to \$25, which if these offenders create the need they should have to pay for the need.

**Proponents' Testimony:**

**Marty Lambert, Attorney, Gallatin County**, gave a background of the bill and he agreed this bill would offer safety measures. He addressed Section 2 of the bill, which would require a court to make reasonable attempts to notify the alleged victim. He felt the law should impose the order of these defendants. He stated the money from the increased surcharge would go to programs that provide victim/witness notification and assistance.

**Gloria Edwards, Coordinator, Victim/Witness Program**, handed in her testimony **EXHIBIT(jus53a01)**. She read a letter by a victim **EXHIBIT(jus53a02)** and handed out a memo from another victim **EXHIBIT(jus53a03)**. She also handed out another letter regarding an incident of this nature **EXHIBIT(jus53a04)**.

**Dennis Paxinos, Attorney, Yellowstone County**, strongly urged the committee for a do pass on this bill. He mentioned there are a large number of these cases. He thought the bill allowed for safety of victims while the defendant was restrained. He mentioned the surcharge and the need for the increase.

**Cecelia Kimble, Representing Self**, said she was a victim of domestic abuse and explained the mental, physical and sexual

abuse she endured from her husband. She believed this bill would be good for Montana and she urged support of this bill.

**Colleen Murphy, Executive Director of Social Workers**, felt concerned about the issues this bill involves. She talked about the government's obligation for protection of its citizens. She thought this bill would aid victims offering additional needs of protection.

**Jane Jelinski, MT. Assoc. of Counties**, added all of Montana's counties support this bill and she encouraged the committee to pass it.

**Mona Jamison, Lobbyist, Gallatin County**, handed out a summary sheet as her testimony **EXHIBIT(jus53a05)**.

*{Tape 1; Side B}*

**Pam Bucy, Assistant Attorney General**, said this bill would offer safety to victims and have an opportunity by not allowing defendants to be released on bail without first appearing before a judge and notifying a victim that their abuser is about to be released. She felt this bill is needed and would assist the victims with their healing process to go on with their lives.

**Ed Krasinski, Victim Witness Advocate, Jefferson County**, thought the funding portion of this bill would provide needed money into programs for the victims of these type of crimes. He supported the bill and asked the committee's do pass.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. DUANE GRIMES** asked if the effective date could be moved up.

**REP. YOUNKIN** said she wouldn't have any opposition to changing the date.

**SEN. STEVE DOHERTY** asked what other crimes were required for the alleged criminal to appear before a judge for bail can be issued.

**REP. YOUNKIN** pointed to Section 3 of the bill listing other crimes for appearance before a judge.

**SEN. DOHERTY** thought it was reasonable for a criminal to appear before a judge in these incidences. He asked if this bill was adding an extra requirement in regard to providing procedure with the criminal's bail. **REP. YOUNKIN** said this becomes a matter of protection for the victim offering additional time.

**SEN. DOHERTY** wanted clarity establishing the reason to require any incident with a criminal to appear before a judge. **Marty Lambert** said domestic crimes involve a lot of emotion. He said a peace officer may accept bail on behalf of a judge in accordance with the schedule and that is being changed with this bill or whenever the warrant of the arrest specifies the amount of bail.

**SEN. DOHERTY** asked if under current law, would it be possible for county attorneys to go to the judge and indicate a violation had occurred. **Marty Lambert** said in a misdemeanor case a judge can set bail as high as \$5,000. He said it is up to the court to make the determination and the additional safeguard being asked with this bill should not depend upon that. The law should require the defendant to see the judge.

**SEN. MIKE HALLIGAN** asked about the timing of release of these defendants. **Marty Lambert** said this should be a law enforcement responsibility. He mentioned Title 46 requiring the court to have responsibility in this area.

**SEN. GRIMES** wondered about the amendment, which included the language of a program operated by a non-profit organization and he asked if that would be the case after July 1 or was there a reason for not including this language in the section. **REP. YOUNKIN** said the same language should be inserted into the permanent section that would be effected.

**SEN. GERALD PEASE** asked how bail could be set at \$5000 in one incident and how these defendants could be released from jail. **Marty Lambert** explained the bail can be unusually high in misdemeanor cases. He said until the criminal receives convictions on record eventually it becomes a felony and with that particular incident there was seven unproven charges. He said the conditions of bail are up to the court's decision.

**Closing by Sponsor:**

**REP. YOUNKIN, HD 28, BOZEMAN**, summarized the need for this bill to offer safe havens for victims. She mentioned this program has been running for a few years now and those that create the offense and need for this program should have to pay for it, that is what the increase in the surcharge is for. She said this would be a requirement on a statewide basis and a hearing on a bail before release is very critical with these issues. She encouraged support for this bill.

HEARING ON HB 390

Sponsor: REP. JIM SHOCKLEY, HD 61, VICTOR

Proponents: Gary Marbut, President of MT. Shooting Sports  
Assoc., Missoula  
Al Smith, MT. Trial Lawyers Assoc.

Opponents: None

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD 61, VICTOR, handed out a possible amendment for this bill **EXHIBIT(jus53a06)**. He stated the victim in these cases would be entitled to attorney's fees from the perpetrator. He said if reasonable force in protecting one's self or property, as defined in the statutes, and the assailant is injured, the victim should receive the fees if the court allows the verdict on their behalf. If the victim did not use reasonable force and lose the case, they would have to pay the fees plus whatever the criminal receives.

Proponents' Testimony:

Gary Marbut, President of MT. Shooting Sports Assoc., Missoula, handed out a letter from the National Rifles Assoc. **EXHIBIT(jus53a07)** and handed out information of an incident pertaining to this bill **EXHIBIT(jus53a08)**. He commented on the training of defending the victim by using a handgun. He felt this legislation to be simple and deals with a victim's rights issue.

Al Smith, MT. Trial Lawyers Assoc., said this bill is added protection for homeowners. He said if a homeowner defends themselves and seriously injures the criminal they should be protected, but in a situation with a child trespassing and the homeowner shot them, they would not be protected by this bill because, in that case, it was not a reasonable use of force.

*{Tape 2; Side A}*

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL asked if this bill would deal with incidences where the homeowner doesn't establish if a crime was being committed. Al Smith referred to a case from New Orleans. He

said under this bill there may be justifiable use. But, this statute would not prevent a civil suit from being filed and it would have to go to a jury to decide.

**SEN. O'NEIL** asked if the issue of this bill was to throw out the cases on a motion to dismiss or a pretrial motion of summary judgement. **Al Smith** felt this bill would allow for these motions to happen and to prevent anyone from filing a suit if there was a clear justifiable use of force.

**SEN. DOHERTY** asked why the conviction was not a prerequisite to the defense, when it is evident the act occurred. **REP. SHOCKLEY** thought the rules of evidence would allow for this to be entered.

**Closing by Sponsor:**

**REP. JIM SHOCKLEY, HD 61, VICTOR**, believed this bill to be a victim's bill and said it may discourage lawsuits. He said the amendments should clarify language and he encouraged support of this bill.

**HEARING ON HB 393**

**Sponsor:** **REP. JEFF MANGAN, HD 45, GREAT FALLS**

**Proponents:** **Deb Kottel, Representing Commissioners of Cascade County**  
**Jane Jelinski, MT. Assoc. of Counties**

**Opponents:** **None**

**Opening Statement by Sponsor:**

**REP. JEFF MANGAN, HD 45, GREAT FALLS**, said this bill allows for video conferencing to be held with detention hearings. He pointed to the new language found within the bill. He stated the need for public safety, cost effectiveness of the bill and essential for assisting rural areas. When courts have youth appearing in front of a judge, it can become disruptive and the youth do not follow the rules therefore this bill would allow for eliminating the disruption.

**Proponents' Testimony:**

**Deb Kottel, Representing Commissioners of Cascade County**, handed in her testimony **EXHIBIT(jus53a09)** and a letter from Cascade Justice Court **EXHIBIT(jus53a10)**.

**Jane Jelinski, MT. Assoc. of Counties**, felt this bill promotes safety and it is cost effective. She asked for support from the committee for this bill.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. O'NEIL** asked if this would infringe upon the public's right to attend the hearing. **REP. MANGAN** said parents and others can be involved, the video would be in the courthouse.

**SEN. O'NEIL** asked if the public would be able to see the defendant also. **REP. MANGAN** answered yes.

**Closing by Sponsor:**

**REP. JEFF MANGAN, HD 45, GREAT FALLS**, closed on this bill and asked for a do concur motion from the committee.

**HEARING ON HB 402**

**Sponsor:** **REP. JEFF MANGAN, HD 45, GREAT FALLS**

**Proponents:** **Jim Oppendahl, MT. Board of Crime Control**  
**Jani McCall, MT. Youth Justice Council**  
**Bill Slaughter, Director, Department of**  
**Corrections, Gallatin County**  
**Valarie Weber, Director, Ted Leichner Youth**  
**Service Center, Billings**  
**Colleen Murphy, Executive Director of Social**  
**Workers**

**Opponents:** None

**Opening Statement by Sponsor:**

**REP. JEFF MANGAN, HD 45, GREAT FALLS**, handed out a module for Montana Juvenile Training **EXHIBIT(jus53a11)**. He explained the module and gave samples of curriculum. He stated the need for the detention center training and explained sections of the bill. He mentioned the pilot project that some areas of Montana are utilizing. This bill extends the pilot project and the need for the training.

**Proponents' Testimony:**

**Jim Oppendahl, MT. Board of Crime Control**, explained the study task force the Department of Crime Control had been a part of. He felt the training would be useful and he urged support of this bill.

**Jani McCall, MT. Youth Justice Council**, said there has been an effort working with the task force and it has proved to be a useful tool. She explained the task force and the meetings they held. She talked about safety during confinement, differences between youth and adult training and the curriculum involved. She felt the project should be exercised another two years to be grounded and completed.

*{Tape 2; Side B}*

**Bill Slaughter, Director, Department of Corrections, Gallatin County**, mentioned the work put into this pilot project and he talked about the need for the training. He felt the project needed to be continued to focus on the professionals utilizing the training and he supported this bill.

**Valarie Weber, Director, Ted Leichner Youth Service Center, Billings**, said the pilot project is growing. She expressed the need to implement the project around the state. She asked for support of this legislation to be able to work two more years and implement the needs of the project.

**Colleen Murphy, Executive Director of Social Workers**, talked about the special training of youth versus adults. She explained the developmental stages of youth and the need for this training.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. HALLIGAN** asked the time involved, if the 120 hours was a basic course of training. **REP. MANGAN** said the hours are standard and 120 hours is the current base.

**Closing by Sponsor:**

**REP. JEFF MANGAN, HD 45, GREAT FALLS**, briefed the need for the pilot project and summarized the training involved. He believed this youth curriculum would become a standard across the states. He discussed the delivery of the project as to where it would benefit the most. He would like to move forward with this project and he asked for a support of this legislation.

**EXECUTIVE ACTION ON HB 405**

**Motion:** SEN. GRIMES moved HB 405 BE AMENDED. Amendments handed out **EXHIBIT(jus53a12)**.

**Discussion:**

SEN. GRIMES explained the language needed in the amendment to work with the bill. He explained the added effective date to the bill also.

**Vote:** Motion carried unanimously.

**Motion:** SEN. GRIMES moved HB 405 BE CONCURRED IN AS AMENDED.

**Discussion:**

SEN. HALLIGAN felt the bill was good, but didn't think Subsection 3 could be changed.

SEN. O'NEIL thought the charges mentioned in the bill would allow people to stay longer within jails. He wondered if a protection clause should be added if no judge was available.

SEN. HALLIGAN said once the bail is posted they have to get out and a judge or justice of the peace would be found to do the action.

**Vote:** Motion carried unanimously.

**EXECUTIVE ACTION ON HB 402**

**Motion/Vote:** SEN. GRIMES moved HB 402 BE TABLED. Motion carried unanimously.

**EXECUTIVE ACTION ON HB 390**

**Motion:** SEN. DOHERTY moved HB 390 BE AMENDED. Amendments handed out by sponsor **EXHIBIT 6**.

**Discussion:**

Valencia Lane asked if these were the amendments prepared by **Al Smith, MT. Trial Lawyers Assoc.** SEN. DOHERTY answered yes, the amendments handed out during the testimony.

**Vote:** Motion carried unanimously.

**Motion/Vote:** SEN. DOHERTY moved HB 390 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

**EXECUTIVE ACTION ON HB 393**

**Motion/Vote:** SEN. HALLIGAN moved HB 393 BE CONCURRED IN. Motion carried unanimously.

**EXECUTIVE ACTION ON HB 224**

**Motion:** SEN. HOLDEN moved to Reconsider HB 224.

**Discussion:**

SEN. HOLDEN was concerned about the financial implications within this bill and the ramifications in terms of lawsuits that could be brought onto the state.

SEN. O'NEIL felt the need to address the issues of this bill. He wondered if the parent, while in custody, would have interaction with the child.

SEN. BISHOP said this bill has an issue with small children. He explained the age differences and he didn't understand this bill to be normal.

**Vote:** Motion to Reconsider carried 6-3 with SEN. DOHERTY, SEN. O'NEIL and SEN. PEASE voting no.

***{Tape 3; Side A}***

**Discussion:**

SEN. GRIMES felt this bill was not answering a lot of questions the committee had. He was concerned about parents, who may been abusive, and how to work through the possibilities of the relationships with their children.

SEN. O'NEIL mentioned children being reunited with the parents and he felt there was a need to prepare the relationship gap. He thought an amendment involving whomever makes the determination of the parent and child reuniting.

**SEN. HALLIGAN** asked if the department proposed the language of the bill dealing with incarcerated parents and the children.

**Dave Ohler, Legal Counsel, Department of Corrections**, said the sponsor drafted the bill. He said the department was in agreement with the bill and made suggestions for amending.

**SEN. HALLIGAN** asked about the program at the womens prison versus the men's prison and what policy guides family interaction during the visits. **Dave Ohler** explained the visits at the men's prison and the extent of the program.

**SEN. HALLIGAN** asked about structured programming and what more that might require. **Dave Ohler** said the language in the bill offers the option of having a program or not having a program. He wasn't sure if the men's program was going to implement a parenting program.

**CHAIRMAN GROSFIELD** sensed the sponsor of this bill dealt mainly with the womens prison. **Dave Ohler** said the main concern was originally proposed by the sponsor and involved the mens prison. He said the womens prison already has this type of program.

**SEN. HALLIGAN** thought to possibly strike sections of the bill and amend page four. He wanted to include the integration program to mention what it consisted of. **SEN. GRIMES** felt to include the integration program would be a positive step to the bill. He was confused about the treatment plan the court would order. He thought the language pertaining to this in the bill wasn't understandable. **SEN. HOLDEN** commented on the treatment plan a court could order. He pointed to a section of the bill and how it may effect the legislature, due to the interpretations, if this bill were to pass.

**SEN. DOHERTY** felt the proponents of the bill talked about the children being the victims due to the incarceration of their parents. He thought the children should be considered and the treatment program would assist the parents to understand that their children are affected by their actions.

**SEN. BISHOP** recalls asking one of the proponents about the structured program and he felt it was very loose. He thought more should be included to the bill in regard to this issue.

**CHAIRMAN GROSFIELD** felt the committee was not satisfied with this bill's current form. He mentioned the options of amending or to table this bill.

**Motion/Vote:** **SEN. HOLDEN** moved **HB 224 BE TABLED. Motion failed 6-3** with **SEN. MCNUTT, SEN. HOLDEN** and **SEN. BISHOP** voting yes.

**Miscellaneous Discussion:**

**CHAIRMAN GROSFIELD** mentioned the issue regarding pepper spray. He asked if the committee would want to send a letter to the Law, Justice and Indian Affairs Interim Committee and work on this issue. He said it could be related to the Department of Corrections or Department of Justice.

**SEN. HOLDEN** said there shouldn't be a need to address this issue any longer and felt a letter wouldn't be sufficient. **SEN. O'NEIL** agreed with his statement.

**CHAIRMAN GROSFIELD** asked the committee to consider action on this issue during the next meeting.

**ADJOURNMENT**

Adjournment: 11:45 A.M.

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SEN. LORENTS GROSFIELD, Chairman

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CECILE TROPILA, Secretary

LG/CT

**EXHIBIT** (jus53aad)